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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re CHRISTIAN E., et al.,

Persons Coming Under the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CHRISTIAN E., SR.,

Defendant and Appellant.

B217567

(Los Angeles County  
Super. Ct. No. CK77574)

APPEAL from an order of the Superior Court of Los Angeles County,  
Valerie Skeba, Referee. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant  
County Counsel, and Timothy M. O’Crowley, Deputy County Counsel, for  
Plaintiff and Respondent.

## **INTRODUCTION**

In this appeal from a dispositional order, Christian E., Sr. (Father) contests a jurisdictional finding made by the juvenile court regarding his sons, Christian E. and Andrew. Father contends the juvenile court erred in finding jurisdiction pursuant to Welfare and Institutions Code section 300, subdivision (b), based on the allegation that Father's substance abuse limited his ability to adequately care for his children and posed a risk of harm to them.<sup>1</sup> We find no error, and affirm the juvenile court's order.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Christian E. (born in June 2001) and Andrew E. (born in December 2002) came to the attention of the San Bernardino County Department of Children and Family Services (SB-DCFS) in May 2009 when their mother, Rebecca S. (Mother), and her boyfriend, Brian B., Sr., physically abused Andrew.<sup>2</sup> A section 300 petition was filed alleging physical abuse of Andrew by Mother and Brian B., Sr., and a resulting risk of harm to Christian. The petition alleged as to the father of Christian and Andrew, Christian E., Sr. (Father), that he had a history of substance abuse which impaired his ability to provide adequate care and supervision for the children. It also alleged that Father had a history of domestic violence which placed the children at risk of harm, and that Father had failed to make any efforts to provide the children with food, clothing, and shelter. The

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<sup>1</sup> All undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Brian B., Jr., the son of Mother and Brian B., and half-brother to Christian and Andrew, was also involved in the juvenile court proceedings, but he is not involved in the present appeal.

social worker reported that Father had been incarcerated for domestic violence and substance abuse. The children were detained and placed in foster care.

On May 13, 2009, the San Bernardino County juvenile court found a prima facie case for detaining the children, and set a jurisdiction hearing for June 3, 2009. The social worker reported that Mother said Father had little involvement with the children since 2004, and had seen them only three times since 2007. She said Father was a drug user and had an extensive criminal record. She said he had physically abused her, although she had not reported it. Mother and the children had been living with Brian B., Sr. for two years.

The social worker interviewed Father, who admitted to being incarcerated from 2005 to 2007. He said he had no contact with the children since 2005, and had not supported them. Father said Mother had him sent to jail for kidnapping Christian and he was fearful she would do so again, and it was easier to stay away. He had been arrested in October 2002 for assault with a deadly weapon, kidnapping, spousal abuse, vandalism, and battery; he was arrested in January 2004 for driving on a suspended license and failure to appear; and he was arrested in late 2004 and early 2005 for assault with a deadly weapon. Father admitted that he had a “very ugly criminal history” and a past drug problem, methamphetamines being his drug of choice. He was on parole and drug tested monthly, and said he was clean. He had never undergone drug rehabilitation outside of jail. He expressed interest in having the children placed in his care. He had his own home and was employed.

A mediation hearing was held on June 17, 2009. The resulting written agreements indicated Father was contesting the substance abuse allegations. During the hearing, however, Father’s counsel stated that Father submitted on the allegations based upon the reports, with one change (to strike the allegation

regarding his whereabouts and ability to parent being unknown). The court found the allegations true, as amended. Because Mother resided in Los Angeles County, the court ordered the matter transferred, pursuant to section 375. The Los Angeles County juvenile court received the case on June 30, 2009.

The Los Angeles County Department of Children and Family Services (DCFS) prepared an interim review report dated September 3, 2009, in which it reported that Father was convicted of possession of a controlled substance in May 2000, and sentenced to 36 months of probation. In 2004, Father's probation was revoked for failure to comply with the terms of his probation, which had included drug testing and drug counseling. He was also convicted of possession of a controlled substance while armed. There was no indication whether Father had complied with the drug testing requirements or submitted proof of completion of drug counseling.

Father had three monitored visits with the children, and the visits went well. DCFS recommended that Father should be permitted to have unsupervised visitation once he demonstrated his sobriety by submitting to an on-demand drug test and testing negative, and thereafter submitting to four consecutive random drug tests and testing negative; any missed or positive drug tests would result in his being ordered to enroll in drug counseling.

On October 14, 2009, DCFS reported that Father had completed a parent education program. Father's visits with the children were going well, and DCFS recommended that Father have alternate weekend visitation.

The juvenile court held the disposition hearing on October 14, 2009. The court began by noting DCFS's recommendation that the children be returned to the home of Mother and Brian B., Sr., and that Father be granted overnight weekend visits. The parties all noted their agreement. The court declared the children

dependents, ordered them placed with Mother, and granted Father visitation as recommended by DCFS. Father was also ordered to participate in conjoint counseling with the children.

This appeal followed.<sup>3</sup>

## DISCUSSION

Father appeals only from the jurisdictional finding that Christian and Andrew are children described by section 300, subdivision (b), because his history of substance abuse limited his ability to adequately care for or supervise them. He does not challenge the finding of jurisdiction based on Mother's abuse of Andrew, or based on his history of domestic violence or his failure to provide for Christian and Andrew's necessities. We conclude that substantial evidence supported the juvenile court's finding that a risk of harm existed based upon Father's history of substance abuse.

Before asserting jurisdiction over a minor, the juvenile court must find that the child comes within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185 (*Veronica G.*)). The burden is on DCFS to “““prove by a preponderance of the evidence that the child . . . comes under the juvenile court's jurisdiction.””” (*Ibid.*, quoting *In re Shelley J.* (1998) 68

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<sup>3</sup> Father filed three notices of appeal: (1) from the order of June 17, 2009, containing the jurisdictional findings, entered by the San Bernardino County Superior Court; (2) from the order of August 17, 2009, setting the matter for a contested disposition hearing, entered by the Los Angeles County Superior Court; and (3) from the dispositional order of October 14, 2009, entered by the Los Angeles County Superior Court. The three appeals were ordered consolidated. Review of the jurisdictional findings is properly before us. A jurisdictional order is only a finding (§ 356); the dispositional order is the judgment (§ 360), from which an appeal may be taken. (§ 395.) The jurisdictional findings are subject to review on appeal from the judgment. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112.)

Cal.App.4th 322, 329.) “On appeal from an order making jurisdictional findings, we must uphold the court’s findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value.” (*Veronica G.*, *supra*, 157 Cal.App.4th at p. 185.) Issues of fact and credibility are questions for the trier of fact, and we may not reweigh the evidence. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) “If there is any substantial evidence, contradicted or uncontradicted, which will support the judgment, we must affirm.” (*In re Tracy Z.*, *supra*, 195 Cal.App.3d at p. 113.)

We recognize that the section 300 petition need only contain allegations against one parent to support the exercise of the court’s jurisdiction, and that the unchallenged allegations against Father (regarding domestic violence and neglect) and Mother (regarding physical abuse) would satisfy the jurisdictional basis for the petition. (*In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554.) However, Father is arguably aggrieved by the finding. As Father points out, such a jurisdictional finding could have an impact on future proceedings in this matter, or in other dependency proceedings. Accordingly, we address Father’s claims. (See *In re John S.* (2001) 88 Cal.App.4th 1140, 1143.)

Under section 300, subdivision (b), a child may be declared a dependent if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.”

Father correctly points to authority which holds, “While evidence of past conduct may be probative of current conditions, the question under section 300 is

whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm. [Citations.] Thus the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’ [Citations.]” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, italics in original, fn. omitted; see also *In re Carlos T.* (2009) 174 Cal.App.4th 795, 803.) Father contends that there was no evidence that his past drug problem posed a current, substantial risk of harm to the children.

The jurisdictional finding at issue here was made on June 17, 2009. At that time, SB-DCFS had reported to the juvenile court that Mother said Father had little involvement with the children since 2004, and that Father was a drug user with an extensive criminal record. Father admitted that he had a “very ugly criminal history,” and was incarcerated from 2005 to 2007. He also admitted to having a drug problem in the past, mostly involving methamphetamines. He said he had no contact with the children since 2005, and had not supported them. At the time he was interviewed, he said he was on parole, and was required to submit to monthly drug tests. He told the social worker that he was clean, although he had never participated in drug rehabilitation outside of jail.

Father’s own admissions, that he had a past substance abuse problem with methamphetamines, that he was still required to drug test monthly, and that he had not completed a drug rehabilitation program, were a sufficient indication that Father posed a substantial *risk* of harm to the children. SB-DCFS was not required to take Father at his word that he was clean, without some proof of the results of his drug testing. While no evidence was presented that he had failed or missed drug tests, he did not demonstrate that all of his drug tests had been clean. Indeed, his substance abuse had resulted in his incarceration and contributed to his absence

from the children's lives for an extended period of time, during which he was unavailable to protect them from the physical abuse that occurred. Accordingly, the information available at the time the jurisdictional findings were entered indicated there was a risk of harm to the children based on Father's substance abuse. We will not disturb the jurisdictional finding regarding the risk posed by Father's past substance abuse.

**DISPOSITION**

The order challenged on appeal is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.